Neutral Citation No. [2024] EWCA Crim 746

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202401666/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 28 June 2024

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE HOLGATE
HER HONOUR JUDGE NORTON
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX
V
ABDULLAH KHALID MHANA

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MR F HOOKWAY appeared on behalf of the Attorney General
MISS V SMITH-SWAIN appeared on behalf of the Offender

J U D G M E N T
Approved

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an application by His Majesty's Solicitor General for leave to refer a sentence which he considers to be unduly lenient. The victims of the offending in this case have the benefit of life long anonymity pursuant to the provisions of the Sexual Offences (Amendment) Act 1992. The respondent, Abdullah Mhana is now 26 years old, having been born on 8 September 1997. The offending took place when he was aged between 23 and 25 years.
2. On 8 April 2024 at Bradford Crown Court Mr Mhana was sentenced by the judge for offences of rape of a child under the age of 13, sexual assault of a child under 13, causing a child to watch a sexual act, sexual activity with a child and making indecent photographs to a total of 10 years six months' imprisonment with an extended licence period of two-and-a-half years. The sentence of 10 years six months was after a discount of 25 per cent plea for guilty, meaning that the sentence after a notional trial would have been 14 years before that discount.
3. It is submitted on behalf of His Majesty's Solicitor General that a sentence of 14 years for all of the offending after a trial would have been simply too low. This is because the offending involved two separate victims, and some unidentified victims in photographs, multiple rapes in relation to one victim, each one of which could attract a starting point of 10 years, a number of offences of sexual activity with a child in relation to that same victim, each one of which attracted a starting point of five years, and making indecent photographs, one offence of which would attract a starting point of one year. It is submitted on behalf of Mr Mhana that this is a very long sentence that is in the acceptable

range for those offences. The court should not tinker with the sentence and sentencing is not a tick box exercise. The judge had a feel for the case and a proper regard to totality. Although the sentence might be considered lenient, it was not unduly so. We are very grateful to Mr Hookway and Miss Smith-Swain for their helpful written and oral submissions.

The facts

4. Mr Mhana groomed two young victims after he had contacted them on social media. He lied about his age and then he mounted a campaign of persistent contact over a sustained period of time. In relation to one victim that progressed to physical meetings and oral rape, and there was one later incident of vaginal intercourse. In relation to the second victim things never progressed beyond remote contact but he procured indecent images to be sent to him. Additionally he sent that second victim a video of him masturbating. Finally, other indecent images were found on his device.
5. On 26 September 2022 Mr Mhana had been arrested on suspicion of an unrelated matter but the police seized his telephone and they found indecent images of children. Two of the children were identified as victim 1, AB, and victim 2, CD. Both were subsequently contacted and provided accounts to the police.
6. AB described being contacted by Mr Mhana by messages on Instagram. He had sent messages to accounts that AB used. The contact was unsolicited. After a time she had replied and they struck up an online conversation. She told him she was 12 years old, even though she was only 11. He lied saying he was 17 years old, even though he was 23 at the time. Even based on his assumed age she raised her concern about their disparity in years. He replied that was not a problem provided she did not tell anyone.
7. After two or three months of online conversation they met in person. AB was still 11.

On seeing him she thought he was much older than his pictures, which is of course the truth. They went to a park together, they sat on a rock and she was made to sit on his lap. After a time he grabbed her hand, took her into the bushes, touched her breast (which was count 1), he instructed her to kneel upon the ground before inserting his penis into her mouth, which was count 2. He ejaculated onto her clothes. AB told Mr Mhana that she wanted to go home while she was with him in the bushes. Count 1 was sexual assault of a child under 13 and count 2 was rape of a child under 13.

8. AB continued to meet Mr Mhana and described the same conduct being repeated. They would go to a secluded part of the park where he would insert his penis into her mouth. She said that each time he would beg her to meet. She described this happening with great frequency and going on for nearly two years and saying it happened on approximately 50 occasions. This was count 3 which reflected a multiple incident count premised on the basis of oral rapes of not less than five times before she turned 13.
9. Whenever there was a gap in meetings Mr Mhana pursued her on different telephone numbers and messaged her. He would demand to know why she was not seeing him. Later there was an occasion when he phoned whilst parked outside her house in his car. He then followed AB and her mother as they went to purchase food and when they returned he continued to wait outside. He only left after AB said she would meet on another occasion.
10. During the same period, so before AB turned 13, Mr Mhana said that she should send pictures and videos showing AB carrying out sexual acts. Some of those were recovered from the download. One video showed AB sitting on her bed naked from the waist down, leaning back and penetrating her vagina with a hair brush handle. That lasted for just under a minute and was a Category A offence involving penetration of a child. Three

videos show AB in a bedroom. AB is clothed but within the footage she exposed her breast and began to rub her nipples. Three videos showed AB dressed only in underwear. During the footage she stroked her buttocks. There were two videos where she exposed her breasts to the camera with the banner "you like that". These were counts 10, 11 and 12, making indecent photographs of a child, one of which was Category A.

11. In messages with an unknown male Mr Mhana described what was happening, saying, "Like a few a month I try I see this one polish slag regularly she just sucks me tho and we smoke she's 14." That was sent on 12 January 2022. In September 2021 Mr Mhana shared a thumbnail image of AB with another contact. He sent a message saying: "Lol and got ger tits vids too and ass, Bro yes she is, 15 with massive tits and ass, your loss then." The context of that message was that Mr Mhana was offering to send a video of AB for £60.

12. After a short gap in their meetings there was one occasion when Mr Mhana told AB that they would travel in his car. AB was now 13 years old. She had always been apprehensive, rightly, of getting in his car but he assured her they would just go for a drive, get something to eat and then he would take her home. After a time they parked up in the car and Mr Mhana told her to get in the back seat. He told her that if she did not he would leave her there and drive away. He locked the car doors and then undressed AB before having vaginal sex with her using a condom and lubricant which he had brought with him. Before this he had penetrated her vagina with his fingers and after penetrating her vagina with his penis he removed the condom and inserted his penis into her mouth. He then ejaculated onto her breasts. AB thought that Mr Mhana had videoed parts of that interaction. He then drove her home, acting apparently as if nothing had happened. AB described instances when she was driven to parks and then further demands for oral sex

continuing up to just weeks before a police interview in July 2023. As with earlier occasions he grabbed her wrists and took her to secluded areas. That was reflected in count 19, a multiple-incident count alleging at least five instances of that offending.

13. The second victim, known as CD, was contacted by Mr Mhana after he added her on social media platform Tik Tok. That was unsolicited by CD. Mr Mhana asked how old she was. She told him she was 14. He replied, again falsely, that he was 17. Over time the conversation became more sexualised. Mr Mhana said he wanted to digitally penetrate CD's vagina and engage in oral sex.

14. CD blocked Mr Mhana but he responded by contacting CD via different accounts. He implored her to respond. He also rang her via Snapchat. She eventually gave into his repeated requests but again ceased contact when he asked for nude pictures. When she was on a family holiday in Spain Mr Mhana continued to contact CD. She responded with a picture of herself in a bikini. Mr Mhana replied with a video showing him masturbating to the point of ejaculation. This was count 13, causing a child to watch a sexual act. Again CD decided to block Mr Mhana having received his video and prior to this CD recalled that Mr Mhana had sent her a picture of his penis.

15. Mr Mhana did not take being blocked well. He showed manipulative behaviour, claimed to be in love with CD, promised her benefits should she continue to acquiesce and become his girlfriend. He repeatedly asked for her to come and see him. CD was wary about that and never met him. She did agree to his request for nude pictures, she was still 14. These were recovered from his mobile phone and there is a video showing CD in a bathroom, she appears to be naked, her breasts are visible and the camera zooms in depicting CD groping one of her breasts. That is a category B picture. There were a total of 12 photographs showing CD dressed either in a bikini or naked. In some her breasts

were visible. Those were counts 14 and 15, making indecent photographs of a child.

16. On the phone there were also other unidentified victims. In addition to the content described, police found a Category B image of an unidentified child (count 16) and eight Category C images (count 17). The Category B images shows a very young baby together with a male penis near their vagina.

17. Police also found threads on Mr Mhana's phone where he had contacted two other teenage girls, one 13, the other 15. He had asked if they were single. He described one as being sexy and asked them to meet up.

18. Mr Mhana was arrested for these matters on 17 July 2023 at his home address. He was interviewed under caution. He provided a prepared statement claiming that any sexual activity with any female had been carried out with the belief that the person was over 16 and thereafter he answered no comment. He was interviewed again under caution on 12 September about downloads from his phone and provided another prepared statement denying distributing indecent images.

The proceedings

19. He was charged on 18 July 2023. The initial charges did not reflect the full scope of the later indictment. He appeared before the Magistrates' Court and not guilty pleas were indicated. There were some ineffective pretrial preliminary hearings and on 27 September 2023 the case was relisted. Mr Mhana pleaded guilty to counts 1 to 3 and 10 to 19. There was also a basis of plea which asserted that no force was used in the offending, which was accepted, and that Mr Mhana had believed AB was consenting. Those pleas were accepted. A discount for plea of 25 per cent was given and there is no issue about that.

20. There were further hearings where sentence was adjourned for a psychologist report to be

obtained. The sentencing was refixed for 5 February and finally listed for sentence on 8 April 2024.

21. So far as Mr Mhana is concerned, he is 26 years old now. He lived with his mother and brothers in the family property. One of the brothers was only 14 years old. Mr Mhana was a qualified structural engineer and had been working as a full time civil engineer.

22. A pre-sentence report was obtained. That showed no evidence of any insight or taking responsibility for his sexual offending or any real understanding or development of internal controls to manage risk. The report concluded he was deceptive, calculating, manipulative and a highly intelligent man who knew exactly what he was doing and why who was clearly a sexual predator. The PSR also found no evidence of remorse.

23. A psychological report was provided to the court. That offered the view that Mr Mhana posed a high risk of further offending against post-pubescent teenage girls. He had only limited insight into why he continued contact with underage girls and he was diagnosed as having mild symptoms of depression and anxiety. Mr Mhana accepted having a sexual interest in post-pubescent teenage girls which was described as hebephilia.

24. There were victim personal statements showing that AB felt scared and in danger. Her trust had been affected and her childhood gone. CD had felt embarrassed and her trust in everyone had been affected.

25. The judge found that Mr Mhana was dangerous and the judge in sentencing decided to structure the sentences so that counts 2 and 3 were the lead offences. The judge said:

> "The way I've decided to deal with this is to, in passing the sentence for Counts 2 and 3, to take into account all the other offending relating both to [AB] and to the other named girl and the other unnamed girls and the aggravating features, in particular in relating to [AB] and to pass concurrent sentences accordingly."

26. The judge imposed then the sentences of 10 years six months' imprisonment on counts 2 and 3 concurrent with each other, with the 30 month extended licence period. Concurrent sentences including concurrent sentences of four years six months for sexual activity with a child were imposed and sexual harm prevention orders, being registered on the sex offender register and licence conditions were also ordered.

The guidelines

27. There are applicable offence-specific guidelines for these offences. As to rape of a child under 13, it was agreed that this was a Category 3A offence with a starting point of 10 years and a range of eight to 13 years. As to sexual assault of a child, it was agreed that this was a 2A offence with a starting point of four years and a range of three to seven years. As to making indecent photographs of a child, Category A, this was a starting point for possession of one year and a range of six months to three years. As to causing a child to watch a sexual act, it was agreed that that was a Category 2A offence with a starting point of two years, with a range of one to three years. As to sexual activity with a child, it was agreed this was a Category 1A offence with a starting point of five years and a range of four to 10 years. There is a totality guideline. It is not permissible simply to add the sentences together. The overall sentence must reflect all of the offending and be proportionate.

An unduly lenient sentence

28. There were in these cases at least six instances of oral rape against AB when she was aged under 13. The first offence had been committed when she was 11. There was a sexual assault of AB when she was aged under 13, albeit on the same occasion as the oral rapes. There were making indecent images on nine occasions of AB when she was under 13 which had been produced at his instruction but sentenced on the basis of possession.

There were offences of engaging in sexual activity with AB when she was aged 13 to 14 and that activity had involved penile penetration of her vagina and mouth, a starting point of five years, and there were six instances of that. There was an offence of causing CD to watch a video of Mr Mhana masturbating when she was 13 to 14, which had a starting point of two years. This followed a period of persistent and manipulative grooming. There were 13 indecent images of CD when she was aged 13 to 14, one of which was Category B which had a six month starting point.

29. There was mitigation available to Mr Mhana. He had no previous convictions and he had positive good character, although less weight is attributed to this factor because of the seriousness of the sexual offending. It is also right to note that in prison he has a good report, he has positive references and is working, but there has been nothing done yet to address his offending behaviour.

30. So far as this overall sentence is concerned we have concluded that the sentence in this case to reflect all of the criminality was simply too short having regard to the relevant guidelines and the number of manipulative offences against young girls which has caused lasting damage. In our judgment, having regard to issues of totality, the sentence after trial for all of the offences against AB alone required a sentence of at least 16 years. The offending against CD involved separate criminality and separate harm. The sentence after trial for all of the offences against CD justified an increase for a notional consecutive sentence of two years. That would have given a sentence of 18 years after trial before discount for plea. A discount for plea of 25 per cent gives a sentence of 13 years and six months. In order to avoid complications with the other sentences, we will therefore grant leave for this Reference and we will allow the Reference to the extent that we will adjust the sentences on counts 2 and 3 by increasing them from 10 years six

months to 13 years and six months. They remain concurrent with each other. All of the other sentences remain as they were and are concurrent with counts 2 and 3. The finding of dangerousness still stands and that leaves the extension period unchanged at two years six months.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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